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In the

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 639

LAURA A. McCLELLAN,

Petitioner,

v.

R. L. PHINNEY, District Director of Internal Revenue, JOHN W. MACY, JR., FREDERICK J. LAWTON, and ROBERT E. HAMPTON, Civil Service Commissioners,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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R. L. PHINNEY, District Director of Internal Revenue, JOHN W. MACY, JR., FREDERICK J. LAWTON, and ROBERT E. HAMPTON, Civil Service Commissioners,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered on May 13, 1964.

OPINIONS BELOW

The opinion of the Court of Appeals is unreported. It is set forth in the Appendix hereto at page A-2. The Court of Appeals denied the Petition for Rehearing on July 30, 1964, Appendix, page A-6.

JURISDICTION

The judgment of the Court of Appeals was entered May 13, 1964 (R. 325). Petition for Rehearing was denied July 30, 1964 (R. 335). The jurisdiction of this Court is based on 28 U.S.C.A. Section 1254 (1).

QUESTION PRESENTED

Whether Petitioner was removed from her position with the Internal Revenue Service in accordance with applicable law and regulations?

REGULATIONS INVOLVED

The following regulations of the Internal Revenue Service as set forth in the Internal Revenue Manual (hereinafter called I. R. Manual) are involved:

§ 1980.1
§ 1981.3 (4)
§ 1981.4 (1)
§ 1981.4 (3)
§ 1981.6 (c)
§ 1982
§ 1986.2 (1) (e)
§ 1987.1

STATEMENT OF THE CASE

Petitioner, an Internal Revenue Employee for over fourteen (14) years, was discharged following her unsuccessful promotion appeal. She exhausted all appellate administrative remedies and then brought suit under 5 U.S.C.A. § 1009 and 5 U.S.C.A. § 652, citing applicable regulations of the Internal Revenue Service which had been violated.

Petitioner and Respondents filed Motions for Summary Judgment in the United States District Court, and judgment was granted on the Respondents' Motion (App. A-1). The United States Court of Appeals affirmed, and denied a Petition for Rehearing.

REASONS FOR GRANTING THE WRIT

A. *Petitioner was not given the required written notice of her rights to reply to the charges against her, both orally and in writing.*

The Notice of Proposed Removal, dated December 10, 1959, to Miss McClellan (R. 36) advised her (R. 41) "you may reply personally and in writing within ten calendar days * * *" She was not notified therein, or otherwise notified in writing of her rights to reply "*both in person and in writing*" (emphasis supplied) as required by the Internal Revenue Regulations, as follows: Section 1986.2 (1) of the Internal Revenue Manual provides "*all notices of proposed adverse action involving employees who have job protection rights under parts 9 and 22* of the Civil Service Regulations, will contain the following information: ....." Sub-Section (e) under Section 1986. 2(1) is as follows: "(e) advice to the employee (veteran and non-veteran) that he has a right to reply both in person and in writing, and to furnish affidavits and evidence in support of his answer ....." (App. A-15).

Section 1987.1 I. R. Manual, (App. A-15) after stating that veterans have such right to make an oral reply, states "it is Revenue Service policy to grant employees covered by

Civil Service Regulations 9.102 (a)(1), the same right to make an oral reply under the same circumstances. This right to reply personally is in addition to the right these employees have to reply "in writing" to the letter of charges."

In addition to not receiving the required written notice of her rights to make both oral and written replies, Petitioner was not advised orally of such rights. Had she been so advised, she would have exercised her right of oral reply (R. 53).

The failure to notify Petitioner of her rights to reply orally and in writing was a clear and substantial violation of the Regulations quoted. It is well established that a classified Civil Service employee, such as Petitioner, must be removed in the manner and by the procedure required by law and the applicable regulations. (*Service v. Dulles*, 354 U.S. 363, 1 L. ed 2d 1402, 77 S. Ct. 1152; *Whiting v. Campbell*, 275 Fed. 2d 905; *Felix v. Government of the Virgin Islands*, 167 F. Supp. 702).

B. *Petitioner's removal was arbitrary and inequitable.*

The charges on which Appellant was removed (R. 36) were based entirely on information in memoranda contained in her Personnel File. Reference to these memoranda in this Record and the written charges based thereon, shows her removal to have been grossly inequitable and arbitrary, contrary to Section 1981.4 (1), of the Internal Revenue Manual, setting the policy of the Revenue Service to be "to assure that no arbitrary and inequitable disciplinary

action will be taken." (App. A-8). Petitioner would emphasize the following:

(1) The punishment was excessive in light of the regulations that required disciplinary actions to fit the infraction charged;

(2) exaggeration and misstatements of charges and failure to consider mitigating facts;

(3) failure to take prompt action to correct Petitioner's alleged deficiencies.

The removal of Appellant from her position, rather than reprimanding, suspending or demoting her, did not comply with either the spirit or letter of the regulations which detail the plan of disciplinary actions (Section 1982 I. R. Manual, App. A-9). It will be observed therein that disciplinary penalties are described in order of severity as: (1) oral admonishments (2) official written reprimand (3) demotions (4) suspensions (5) removals.

The record is clear that after alleged deficiencies as far back as 1952 (R. 313), no intermediate disciplinary penalties were imposed until the most drastic action possible, removal, was undertaken. It is stated in Section 1982.6, Removals, I. R. Manual (App. A-14):

> "REMOVALS: (1) Removal action will be taken whenever required by law or regulation or whenever warranted by the facts of the individual case such as repeated infractions or offenses for which previously administered oral admonishments, official reprimands and/or suspensions have not served to prevent repeti-

tion of offenses, or when the initial infraction or offense is so serious that it warrants removal.

"(2) It should be recognized that an employee who is removed for cause from his position also may be denied other employment on those grounds. Therefore, the greatest care and judgment must be applied in effecting a removal action. In exercising this judgment, the appropriate official must carefully, dispassionately and objectively consider all of the pertinent facts and evidence, pro and con, and decide the issue on the basis of what is fair and just and best serves the broad interests of the Revenue Service. If, after careful consideration of all the facts, there is sufficient evidence that the employee is guilty as charged, removal action should be *immediately taken* in accordance with statutory and regulatory requirements." (Emphasis supplied)

The regulations (Sections 1982.5 — Suspensions, I.R. Manual) provide even as to suspensions that they "should be used most sparingly and imposed only after admonishments or other official reprimands have been used without success or when the gravity of the offense is so serious as to warrant a more stringent corrective action and no other disciplinary action is appropriate." (App. A-13).

The same section indicates that a suspension is the penalty for serious or repeated misconduct or willful violation of a local, state or federal law, rule, regulation or administrative instruction. A suspension would have been appropriate in Miss McClellan's case only after a written reprimand and after proper proof of her offenses. The more drastic action of removal from her position after years of conscientious service can hardly be justified under any

theory, and certainly not under the cited regulations governing her employment and removal. Section 1981.3 (4) of the I. R. Manual provides, in summary:

> "The final disciplinary action to be taken must be fair and just and based on a careful evaluation of the nature of the offense as shown by all the evidence and facts, the effect of the action on the Revenue Service and its effect on the employee as an individual." (App. A-7)

Apparently, the alleged refusal to accept what she considered a demotion precipitated the decision to remove Appellant. The actual charges were then sifted from her file in an effort to "build a case" for removal. There was no consideration of the factors required by Section 1981.4 (3), I.R. Manual (App. A-8) where it is stated:

> "The best interests of the Service, the employee's work history, character and potential and any mitigating or aggravating circumstances will be considered in determining the severity of the penalty." (See R. 315 with respect to improvements noted in Appellant by Supervisor.)

A comparison of the charges contained in the Notice of Proposed Removal dated December 10, 1959 (R. 36) with the memorandum of October 13, 1958, by Joe Jamar, her supervisor, in which the events were originally recorded (R. 73) show exaggerations and mis-statements, Documentation is required. (§ 1981.6 (c), I.R. Manual, App. A-9). In Specification 1 under Charge III in the December 10, 1959, letter, it is stated, "When asked for a definite commitment as to your intentions of correcting this habit of *flying into a rage*, you stated, 'Never will I discuss anything with you

again except business.' You were given a warning about your display of temper on this occasion in a letter of October 13, 1958, from your supervisor, Joe R. Jamar, Collection Group Supervisor. In this letter your supervisor stated that it might be necessary to recommend a reprimand if the displays of temper continue in the future." (Emphasis supplied). Reference to the memorandum or letter in question (R. 73, 74) shows that the quoted statements above are far from accurate, being *slanted* against Miss McClellan. In paragraph 3 of the document of October 13, 1958, Jamar states: "I reminded you that as time went on, you were becoming more temperamentally unsuited for the type of employment in which you are engaged. You were again asked for a definite commitment as to your intentions about correcting this deficiency. Your reply was, 'Never will I discuss anything with you except business'." *There is nothing, of course, in the entire memorandum about "flying into a rage."*

Again, in the sixth paragraph of the memorandum of October 13, 1958, Jamar states that if Miss McClellan displays anger and goes into tirades during which members of the group and its methods of operations are condemned, "*it will be made the subject of a reprimand* and brought to the attention of proper higher authorities." Thus, as of October 13, 1958, Miss McClellan was definitely told that future temper displays would result in a reprimand. Miss McClellan, contrary to her supervisor's statement on which she relied (R. 54), *never received a reprimand prior to her*

receipt of the First Notice of Proposed Removal. (R. 9) Indeed, she was so *unaware** of any conduct on her part justifying disciplinary action that *she appealed on 10/22/59* her failure to receive promotion before the first letter of Notice of Proposed Removal was written on October 23, 1959. (R. 9 and 14). She had Satisfactory Efficiency reports for her entire Internal Revenue Career. (R. 53).

Furthermore, the last paragraph of Mr. Jamar's memorandum of October 13, 1958, states: "I might add that since the time we had our conference, *you have shown improvement in the subjects on which you received unsatisfactory ratings. Furthermore, I have noted that you have remained unusually calm since that date in your dealings with members of this group and taxpayers alike.*" (Emphasis supplied). The omission in the charges of the favorable statements regarding the improvements in her attitude and work is likewise significant.

It would appear that little effort has been made to adhere strictly to the facts in another instance, particularly in *Specifications 2 and 3 of Charge II* of the Notice of Proposed Removal dated December 10, 1959. (R. 36). These specifications should be compared to the contents of Office Memorandum from Jamar to Miss McClellan dated April 1, 1959 (R. 240). Specification 2 *sets out alleged statements made to Jamar while in a work performance discussion with Revenue Officer Cook.* The memorandum on the other hand makes no reference to the circumstances under which the remarks were made (See second paragraph of the memorandum), and the memorandum also contains the

added phrase, "*or words to that effect.*" Furthermore, there is *no mention in the memorandum of "loud and heated words,"* as stated in the specification. The memorandum states that Miss McClellan came into Mr. Jamar's office where Mr. Ferrell was present and made the remarks with reference to the Survey report. The memorandum said nothing *about her being loud in this instance,* though she is admonished from interrupting fellow workers by talking to them about business and personal matters in which they are usually not interested or concerned.

It seems again that the author of the Notice of Proposed Removal was attempting by adding a phrase or omitting a phrase here and there to make a stronger case for her removal than the facts justify. Such reliance on "puffed-up" charges shows again that her removal based thereon was inequitable and arbitrary.

C. *Petitioner should have been afforded an investigation by the Inspection Service of Internal Revenue because of the introduction by Respondents into the public Court record of an accusation of abusive or discourteous treatment of a taxpayer.*

Included in the record introduced into the trial court by Respondents was an alleged incident in August 1957 (R. 313) in which Petitioner is accused of having talked unusually loud about a taxpayer within the taxpayer's hearing distance, and such talk was overheard by the taxpayer and caused him to be upset.

Internal Revenue Manual Exhibit 1980-1 (App. A-7) lists misconduct which must be referred to Inspection. Item 12 of the list is "abusive or discourteous treatment of taxpayers or violation of their civil rights". Though the alleged incident was not part of the formal charges, injecting it into the public Court record for the presumed purpose of justifying her removal, requires the same solution, namely, an investigation by the Inspection Service of Internal Revenue, to prove or disprove the allegation.

CONCLUSION

For the reasons given above, petitioner's discharge was illegal, and a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

(Caption omitted) (Filed in Clerk's office August 16, 1963.)

JUDGMENT

The Motions for Summary Judgment filed herein by Plaintiff and by Defendants having been presented, and the Court being advised,

The Court finds that the Plaintiff Laura A. McClellan was removed from her Civil Service position as a Revenue Officer (Intern) GS-7 in the Houston, Texas Office of the Internal Revenue Service on January 15, 1960, in accordance with the applicable law and regulations, and that all applicable procedural requirements were met in effecting her discharge.

The Court further finds that the cause for removal of the Plaintiff Laura A. McClellan, a classified employee, was for the judgment of the removal officer and that the actions of the removal officer in dismissing the plaintiff should not be reviewed by this Court except to insure compliance with the pertinent statutory requirements.

The Court having overruled Plaintiff's Motion for Summary Judgment herein and having sustained Defendant's Motion for Summary Judgment herein,

It is ORDERED, ADJUDGED and DECREED that Plaintiff Laura A. McClellan, take nothing by her suit and the same is hereby dismissed.

SIGNED this the 16 day of August 1963.

ENTERED: Civil 5 Page 844

UNITED STATES DISTRICT JUDGE

/s/ BEN H. RICE, JR.

In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 21218

LAURA A. McCLELLAN,

Appellant,

v.

R. L. PHINNEY, District Director of Internal Revenue, et al.,

Appellees.

Appeal from the United States District Court for the Western District of Texas.

(May 13, 1964.)

Before HUTCHESON, PRETTYMAN* and JONES, Circuit Judges.

PER CURIAM: Laura A. McClellan was removed from her position in the Internal Revenue Service as an officer-intern. She brought this suit in the District Court attacking her removal as illegal and seeking reinstatement with back pay. The court found that the removal was "in accordance with the applicable law and regulations, and that all applicable procedural requirements were met in effecting her

* Senior Circuit Judge of the District of Columbia Circuit, sitting by designation.

discharge." She had availed herself of all applicable administrative procedures for review in the agency and before the Civil Service Commission.

We find no error. *Hargett v. Summerfield*, 243 F. 2d 29 (D.C. Cir. 1957), *cert. denied* 353 U.S. 970; *Williams v. Cravens*, 210 F. 2d 874 (D.C. Cir. 1954), *cert. denied* 348 U. S. 819; *Powell v. Brannam*, 196 F. 2d 871 (D.C. Cir. 1952).

AFFIRMED.

In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 1963

No. 21218

D. C. Docket No. 1286

LAURA A. McCLELLAN,

Appellant,

v.

R. L. PHINNEY, District Director of Internal Revenue, et al.,

Appellees.

Appeal from the United States District Court for the Western District of Texas.

Before HUTCHESON, PRETTYMAN* and JONES, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged by this Court that the appellant, Laura A. McClellan, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

---

*Of the D. C. Circuit, sitting by designation.

May 13, 1964

Issued as Mandate: Aug. 11, 1964.

In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 21218

LAURA A. McCLELLAN,

Appellant,

v.

R. L. PHINNEY, District Director of Internal Revenue, et al.,

Appellees.

Appeal from the United States District Court for the Western District of Texas

---

ON PETITION FOR REHEARING (July 30, 1964)

Before HUTCHESON, PRETTYMAN* and JONES, Circuit Judges.

BY THE COURT:

The Petition for Rehearing filed in the above numbered and entitled cause is hereby DENIED.

---

*Senior Circuit Judge of the D. C. Circuit, sitting by designation.

Exhibit 1980-1

The list below contains some of the allegations of misconduct which must be referred to the servicing Inspection office for investigation. This list is furnished as a guide and is not to be considered as all-inclusive. Some of these violations are subject to criminal prosecution as well as severe disciplinary action.

* * * * *

12. Abusive or discourteous treatment of taxpayers or violation of their civil rights.

* * * * *

1981.3 General Principles

* * * * *

(4) Management must thoroughly review and consider all the evidence and data of record before making a final decision and attach due weight to factors supporting the employee's position whether or not he offers such factors in his own defense. In general, any information which has a bearing, directly or indirectly, upon the incident upon which the charge is based may be considered relevant evidence, whether it be sworn testimony, recollection, facts of record, eye-witness accounts, etc. The final disciplinary action to be taken must be fair and just and based on a careful evaluation of the nature of the offense as shown by all the evidence and facts, the effect of the action on the Revenue Service and its effect on the employee as an individual.

* * * * *

1981.4 Policy

(1) It is the policy of the Revenue Service to *assure that no* arbitrary and inequitable *disciplinary action will be taken.* The Revenue Service expects, among other things, its employees to perform their work conscientiously in the most effective manner possible; conduct themselves during and outside working hours in a manner which will not reflect discredit on the Revenue Service; respect the administrative authority of supervisors directing their work; and observe the spirit as well as the letter of the laws, regulations, rules and Treasury and Revenue Service policies governing their conduct.

* * * * *

(3) A Standard Schedule of Offenses and Disciplinary Penalties will not be used in the Revenue Service for determining the penalty for a particular offense. Each case involving an offense will be considered individually and dealt with on its own merits. The penalty shall be that which, in the considered judgment of the disciplinary official or supervisor, will be fair and just and will promote and maintain a proper state of discipline and morale. Where a specific penalty is prescribed by statute, such penalty must be imposed. The best interests of the Service, the *employee's* work history, character and potential and any mitigating or aggravating circumstances will be considered in determining the severity of the penalty. The rights of employees to present their side of any charge will not be abridged and the exercise of such rights will not be discouraged or made the occasion of any prejudicial action.

1981.6 Responsibility

* * * * *

(c) Supervisors are also responsible for the documentation necessary to fully support (as far as possible without investigation) disciplinary actions for offenses which are administrative in nature. (See Subsection 1983: (2) below.)

1982 TYPES OF DISCIPLINARY PENALTIES

1982.1 GENERAL

This subsection contains a discussion of the types of disciplinary penalties in the order of their severity and should prove helpful to appropriate officials and supervisors in determining the penalty to be imposed for a particular offense.

1982.2 ORAL ADMONISHMENTS

(1) An oral admonishment is an interview between the immediate supervisor and the employee on the employee's breach of conduct or his failure to observe a local, state or Federal law, regulation, or administrative instruction or policy. Oral admonishments should be used when the offense is not of a serious nature and it can be reasonably expected that the employee's conduct or behavior will improve.

(2) Under normal conditions, oral admonishments should take the form of private discussions. Only during an extreme emergency, when immediate corrective action is necessary,

should he be admonished before fellow employees. The admonishment is, in substance, an informal interview in which the supervisor advises the employee of the conduct or behavior expected, and together they agree on a course of action which is understood by both. This informal interview should be properly planned and conducted by the supervisor after all the facts have been obtained and evaluated. Such action on the part of the supervisor will insure that the interview will progress in an orderly fashion and not wander unnecessarily to extraneous matters. It should be conducted so as not to create employee dissatisfaction or resentment.

(3) Supervisors should confirm, in writing, an oral admonishment when they feel that the minor infraction may occur again and possibly require more severe disciplinary action. The letter of confirmation to the employee will give the reasons for the admonishment and will caution him regarding his future conduct. This type of letter is not to be construed as a letter of official reprimand. (See subsection 1982.3 below.) Copies of letters of confirmation will not be placed in the employee's official personnel folder but will be retained by the supervisor. Whether or not a written confirmation is made, supervisors will make a notation of an admonishment on the Employee Record Card (OF 4b) for subsequent follow-up action.

1982.3 OFFICIAL WRITTEN REPRIMAND

(1) An official written reprimand is a penalty appropriate for a significant infraction or repeated minor infractions.

The written reprimand is used as a means for recording incidents of misconduct or summarizing previous incidents when the oral admonishment has failed and when it becomes necessary to document dissatisfaction with an employee's conduct. It also serves as a means for alerting the employee to the fact that continued misconduct may bring more serious consequences. There is a close relationship between the oral admonishment and the written official reprimand, particularly when the reprimand is used following a disregard of agreements and understandings reached in the oral admonishment.

(2) The reprimand is usually recommended by the immediate supervisor to the appropriate official who will give full and fair consideration to all the facts before making a final decision. The inquiry into the facts may, at the discretion of the official, include an informal discussion with the employee. Where a decision to take such action has been made, the letter of official reprimand should be prepared with the advice and assistance of the personnel office and signed by the official having this authority. The reprimand should contain:

(a) A specific description of the offense including time, place, and circumstances:

(b) If appropriate, a restatement of past offenses for which admonishments or other penalties were given, together with corrective action that was suggested by the supervisor;

(c) The following Statements: "This is a letter of official reprimand. A copy of this letter will be placed in your official personnel folder;" and

(d) A statement, when appropriate, that repetition of the offense may result in more severe disciplinary action.

(3) Letters of official reprimand issued by Regional, District, or Service Center diciplinary officials *will not include* statements to the effect that the employee may, if he so desires, submit a written reply to the reprimand or appeal the reprimand to higher authority. However, this would not prevent the employee from submitting a written reply and/or a written request to have the reprimand reviewed by higher Revenue Service authority in accordance with the appeals procedure in Subsection 1988. Further, review decisions of appealed reprimand will omit any reference to any avenue of appeal the employee may still have under Subsection ~~1000~~ ~~1700~~. [Handwritten: 198(12)]

(4) Since it is Revenue Service policy not to include a statement concerning the employee's opportunity to reply in the letter of reprimand, all reprimands and any replies thereto will be filed on the temporary side of the employee's official personnel folder. This filing requirement is the same irrespective of whether or not the employee replies to the letter of reprimand. (Auth: CSC Ltr. dtd. 8-7-58, PRI: KDS: bmg, LM-7615).

(5) Letters of reprimand and related records may not be withdrawn from the official personnel folder except when the employee is separated from employment with the Treasury Department. (See Subsection 1(11)16.2: (2), Part I of this Manual.)

1982.4 DEMOTIONS (AND REDUCTIONS IN RANK)

Demotions for the purpose of these instructions are changes from one position to another position of a lower grade or reduction in rank or salary. Demotions as a disciplinary penalty should be used only in unusual and exceptional situations and when other types of penalties would not serve to prevent future offenses. (See subsection 1911, Part 1, this manual.)

1982.5 SUSPENSIONS

(1) A suspension is the temporary nonduty, nonpay status of an employee as a penalty for serious or repeated misconduct or wilful violation of a local, state or Federal law, rule, regulation, or administrative instruction; or as a protective measure in emergency situations pending a proposed removal or investigation. Emergency suspensions are effected promptly (see subsection 1986.21 below) and must be supported by conclusive evidence of record that a "bona fide" emergency situation does exist. All proposed suspensions should be discussed with the personnel officer to insure that statutory and regulatory requirements will be observed.

(2) Consideration should be given to the fact that suspensions as a disciplinary penalty not only penalize the employee who has committed the offense but also the work group and the Revenue Service, in that the services of the employee are lost during the suspension period and work production may suffer. In some cases, the loss is multiplied when operations dovetail to the extent that one absence impedes the work of related functional units. Suspensions

as a disciplinary penalty should be used most sparingly and imposed only after admonishments or other official reprimands have been used without success or when the gravity of the offense is so serious as to warrant a more stringent corrective action and no other disciplinary action is appropriate. Suspensions as a general rule, unless otherwise required by statute, should be limited to short periods of time, normally not more than ten workdays. Generally, when an employee has committed an offense which warrants a suspension in excess of ten workdays the offense is serious enough to consider removal action.

1982.6 REMOVALS

(1) Removal action will be taken whenever required by law or regulation or whenever warranted by the facts of the individual case such as repeated infractions or offenses for which previously administered oral admonishments, official reprimands and/or suspensions have not served to prevent repetition of offenses, or when the initial infraction or offense is so serious that it warrants removal.

(2) It should be recognized that an employee who is removed for cause from his position also may be denied other employment on those grounds. Therefore, the greatest care and judgment must be applied in effecting a removal action. In exercising this judgment, the appropriate official must carefully, dispassionately and objectively consider all of the pertinent facts and evidence, pro and con, and decide the issue on the basis of what is fair and just and best serves the broad interests of the Revenue Service. If, after careful consideration of all the facts, there is sufficient

evidence that the employee is guilty as charged, removal action should be immediately taken in accordance with statutory and regulatory requirements.

* * * * *

1986.2 ADVANCE NOTICE OF PROPOSED ADVERSE ACTION

(1) All notices of proposed adverse action involving employees who have job protection rights under parts 9 and 22 of the Civil Service Regulations will contain the following information:

* * * * *

(e) Advice to the employee (veteran and nonveteran) that he has a right to reply both in person *and* in writing, and to furnish affidavits and evidence in support of his answer. The advance notice will specifically indicate the name and address of the person to whom the reply may be made and that the reply must be made within the time specified in the notice—usually 10 calendar days.

* * * * *

1987.1 GENERAL

(1) An employee who has job protection rights under the provisions of section 14 of the Veterans' Preference Act of 1944 has a statutory right to make an oral reply before the appropriate official or his designee(s) in connection with a notice of proposed adverse action. It is Revenue Service policy to grant employees covered by Civil Service Regulation 9.102(a)(1), the same right to make an oral reply under the same circumstances. This right to reply personally is in addition to the right these employees have to reply "in writing" to the letter of charges.

(2) Requests from these employees to make an oral reply to a letter of charges should be included in the "written reply" to the charge letter. However, an oral request will be accepted provided it is made not later than the date shown in the letter of charges for submitting the written reply. The time, place, to whom and essence of the oral request should be recorded in a memorandum for the file and incorporated in the case file.

(3) Where the appropriate official does not personally hear the oral reply of the employee he may designate a representative to hear the case for him. If a representative is chosen, he should be an employee who has a demonstrated record for fairness, impartiality and soundness of judgment necessary in arriving at sound recommendations. The designee should become thoroughly familiar with the entire disciplinary case before the oral reply is heard. This will permit the designee(s) to bring out all the facts to make a just and fair recommendation to the appropriate official.